IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3275 OF 2006

Prakash Yeshwant Bhagat .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.Kuldeep Patil for applicant

Mr.R.Y.Mirza, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th September 2006.

P.C.

. This Application for Bail by the applicant who has been arrested in C.R. 41 of 2006 is after the trial court has rejected identical relief on 22nd June 2006.

2. The submission of Mr.Patil for applicant is that the entire case is based upon the confession which is made in the presence of police officers at the police station and that is how the applicant and others are involved in the crime. He submits that this is not a piece of evidence which is admissible in law. There is no independent evidence either in the form of any eye witnesses or otherwise. In such circumstances and when the applicant is alleged to have committed two crimes and he is enlarged on bail in the subsequent one, this is a fit case in which the applicant should be enlarged on bail. More so, when the alleged act attributed to the applicant is not taking part in the assault but the subsequent act of destruction of the dead body. This is a case where the applicant has been named by the father of the deceased as also his brother, only after the alleged confession at the police station. This

weak piece of evidence should, therefore, would not be admissible and for all these reasons the applicant deserves to be enlarged on bail.

3. Mr.Mirza, A.P.P. submits that the trial court has rightly proceeded to reject the bail. He submits that the co accused, accused No.2, Yuvraj Ubhe had applied for identical relief and this Court has rejected his application for enlarging him on bail on 22nd August 2006. He submits that the offences alleged against the applicant are serious in nature and punishable with sentence of Death of Imprisonment for life. A 16 year old boy was told to accompany the accused on motor-cycle and after the brutal assault near a Dam, his dead body was dumped in the river bed. After this crime, the applicant and other accused committed other crime i.e. murder of one Shiva a Watchman. Considering that apart from the confession but there are independent witnesses who have deposed about the

applicant being last seen in the company of the deceased and accompanied him to a particular place and stayed with him, this is not a fit case for enlarging the applicant on bail.

4. After hearing both sides and perusing the relevant material with the assistance of learned Counsel, I am of the view that the trial court was in no error in rejecting the application. At this stage, admissibility of the materials collected is not to be decided and gone into finally. All contentions in that behalf, would be open for being urged and decided at an appropriate stage. Prima facie, when the motor-cycle was recovered and the applicant and other accused had gone to the house of the deceased and called him and when deceased left his residence with them, he was not traceable for next two days thereafter, is some thing which cannot be brushed aside. The co-accused has been denied bail after being satisfied about the

seriousness of the crime and the punishment that is provided for the same in law. Applying all relevant factors to the present applicant, I am of the view that the trial court was right in rejecting the application of the applicant. The applicant accused is also involved in another crime. He is enlarged on bail there. But no two crimes and manner of their commission is identical. In the present case, the applicant is alleged to have assaulted the deceased with a stone. For all these reasons, the application is dismissed.

(S.C.Dharmadhikari, J)